

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

S.L. ANDERSON & SONS, INC., *et al.*,

Plaintiffs,

v.

PACCAR, INC., *et al.*,

Defendants.

CASE NO. C18-0742-JCC

ORDER

Pursuant to the parties' stipulation and proposed order (Dkt. No. 58), the Court ENTERS the following protective order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following stipulated protective order. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

- 4 1. Confidential submissions to the Environmental Protection Agency (“EPA”) and
5 California Air Resources Board (“CARB”);
- 6 2. Confidential communications with the EPA and CARB regarding confidential
7 submissions, emission defect reports, and evaluation of corrective actions;
- 8 3. Internal communications regarding confidential EPA and CARB submissions,
9 emission defect reports, and evaluation of corrective actions;
- 10 4. Confidential business information regarding warranty claim processing and
11 resolution;
- 12 5. Confidential business information regarding proprietary design, manufacture, and
13 testing processes;
- 14 6. Confidential and proprietary internal communications regarding marketing and
15 sales strategies and practices; and
- 16 7. Confidential and proprietary financial performance and cost documents.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential material (as
19 defined above), but also: (1) any information copied or extracted from confidential material; (2)
20 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
21 conversations, or presentations by parties or their counsel that might reveal confidential material.

22 However, the protections conferred by this agreement do not cover information that is in
23 the public domain or becomes part of the public domain through trial or otherwise.

24 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

25 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
26 or produced by another party or by a non-party in connection with this case only for prosecuting,

1 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
2 the categories of persons and under the conditions described in this agreement. Confidential
3 material must be stored and maintained by a receiving party at a location and in a secure manner
4 that ensures that access is limited to the persons authorized under this agreement.

5 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
6 ordered by the Court or permitted in writing by the designating party, a receiving party may
7 disclose any confidential material only to:

- 8 (a) the receiving party’s counsel of record in this action, as well as employees
9 of counsel to whom it is reasonably necessary to disclose the information
10 for this litigation;
- 11 (b) the officers, directors, and employees (including in-house counsel) of the
12 receiving party to whom disclosure is reasonably necessary for this
13 litigation, unless the parties agree that a particular document or material
14 produced is for Attorney’s Eyes Only and is so designated;
- 15 (c) experts and consultants to whom disclosure is reasonably necessary for
16 this litigation and who have signed the “Acknowledgment and Agreement
17 to Be Bound” (Exhibit A);
- 18 (d) the Court, court personnel, and court reporters and their staff;
- 19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the
21 copy or imaging service instructs the service not to disclose any
22 confidential material to third parties and to immediately return all originals
23 and copies of any confidential material;
- 24 (f) during their depositions, witnesses in the action to whom disclosure is
25 reasonably necessary and who have signed the “Acknowledgment and
26 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the

designating party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement; and

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court's files.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
5 unnecessarily encumber or delay the case development process or to impose unnecessary
6 expenses and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated
8 for protection do not qualify for protection, the designating party must promptly notify all other
9 parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (*see, e.g.*, section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or
12 discovery material that qualifies for protection under this agreement must be clearly so
13 designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents
15 and deposition exhibits, but excluding transcripts of depositions or other
16 pretrial or trial proceedings), the designating party must affix the word
17 "CONFIDENTIAL" to each page that contains confidential material. If
18 only a portion or portions of the material on a page qualifies for
19 protection, the producing party also must clearly identify the protected
20 portion(s) (*e.g.*, by making appropriate markings in the margins).

21 (b) Testimony given in deposition or in other pretrial proceedings: Any party
22 or non-party may, within 30 days after receiving the transcript of the
23 deposition or other pretrial proceeding, designate portions of the
24 transcript, or exhibits thereto, as confidential. If a party or non-party
25 desires to protect confidential information at trial, the issue should be
26 addressed during the pretrial conference. In the event any testimony is

determined, by agreement of the parties or direction of the Court, to be incorporated into this case as if taken herein although originally obtained in *BK Trucking Co. v. PACCAR, Inc.*, Case No. 15-2282 (D.N.J. 2016) (“BK”), any portions of such transcript and exhibits previously designated as confidential shall be designated as confidential in this matter with no further action of the parties.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party’s right to secure protection under this agreement for such material. Upon correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in

1 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
2 conference with other affected parties in an effort to resolve the dispute without court action. The
3 certification must list the date, manner, and participants to the conference. A good faith effort to
4 confer requires a face-to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
6 intervention, the designating party may file and serve a motion to retain confidentiality under
7 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
9 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
10 other parties) may expose the challenging party to sanctions. All parties shall continue to
11 maintain the material in question as confidential until the Court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
16 party must:

- 17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;
- 19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the
21 subpoena or order is subject to this agreement. Such notification shall
22 include a copy of this agreement; and
- 23 (c) cooperate with respect to all reasonable procedures sought to be pursued
24 by the designating party whose confidential material may be affected.

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1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately: (a) notify in writing the designating party of the unauthorized
5 disclosures; (b) use its best efforts to retrieve all unauthorized copies of the protected material;
6 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
7 this agreement; and (d) request that such person or persons execute the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A).

9 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a producing party gives notice to receiving parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order or agreement that provides for production without prior privilege review. The parties agree
16 to the entry of a non-waiver order under Federal Rule of Evidence 502(d), as set forth herein.

17 10. NON-TERMINATION AND RETURN OF DOCUMENTS

18 Within 60 days after the termination of this action, including all appeals, each receiving
19 party must return all confidential material to the producing party, including all copies, extracts,
20 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
21 destruction.

22 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
23 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,
24 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
25 work product, even if such materials contain confidential material.

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1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 Dated: March 28, 2019

Respectfully submitted,

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 It is further ORDERED that pursuant to Federal Rule of Evidence 502(d), the production
3 of any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.

7 DATED this 1st day of April 2019.

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11 John C. Coughenour
12 UNITED STATES DISTRICT JUDGE
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the stipulated protective order that was
6 issued by the United States District Court for the Western District of Washington on ____ [date]
7 in the case of *S.L. Anderson & Sons, Inc., et al. v. PACCAR, Inc., et al.*, Case No. C18-0742-
8 JCC. I agree to comply with and to be bound by all the terms of this stipulated protective order
9 and I understand and acknowledge that failure to so comply could expose me to sanctions and
10 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
11 any information or item that is subject to this stipulated protective order to any person or entity
12 except in strict compliance with the provisions of this order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____